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STIBLEY, MICHAEL R				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/798,640

Applicant(s)

WITZENBURG, KRISTIN

Examiner

MICHAEL STIBLEY

Art Unit

4194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
4a) Of the above claim(s) 10-48 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10 and 49 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☒ Claim(s) 1-49 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 27 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-9, and 49, drawn to providing discounted media placement to a plurality of advertisers including acting as intermediary, receiving a large block of media, dividing large block of media, providing smaller blocks of media, , classified in class 705, subclass 14.
 - II. Claims 10-48, drawn to internet based method, system, and computer program product for providing discounted Internet media placement to a plurality of advertiser including development of jump page and linking to desired websites, classified in class 707, subclass E17.116.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II has separate utility such as internet based method, system, and computer program product for providing discounted Internet media placement to a plurality of advertiser including development of jump page and linking to desired websites. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together.

Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the

allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

4. **Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined** even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected invention.**

5. The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

6. If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

7. Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

8. During a telephone conversation with Marcus Risso on December 11, 2007 a provisional election was made without traverse to prosecute the invention of Group I,

claims 1-9 and claim 49. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-48 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

9. Applicant is requested to cancel withdrawn claims 10-48.

Claim Rejections - 35 USC § 101

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Laws of nature, physical phenomena and abstract ideas are not patentable subject matter. See MPEP 2105.

11. **As to Claims 7-9, the act of researching a market in a specific industry** is an abstract idea as it does not provide for a repeatable, tangible, or concrete result.

12. Additionally, the MPEP provides that nonfunctional descriptive material that does not constitute a statutory process, machine, manufacture, or composition of matter and should be rejected under 35 U.S.C. 101. Certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter. Nonfunctional descriptive material may be claimed in combination with other functional descriptive multi-media material on a computer-readable medium to provide the necessary functional and structural interrelationship to satisfy the requirements of 35 U.S.C. 101. For example, a claim reading "A computer program product comprising a computer readable medium containing a computer

program for causing..." is a way to claim non-functional descriptive material. (See MPEP 2106.01 II. Nonfunctional Descriptive Material). Further, MPEP 2106 II C provides that "The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim: (A) statements of intended use or field of use, (B) "adapted to" or "adapted for" clauses, (C) "wherein" clauses, or (D) "whereby" clauses.

13. **As to Claim 8**, the clause "**wherein** the act of researching a market in specific industry further comprises an act of selecting an industry from a group consisting of a financial services industry, automotive industry, computer industry, real estate industry, and transportation industry" is a "wherein" clause, calling into question the limiting effect of the language in Claim 8. The types of industry claimed in Claim 8 are examples of field of use and are thus not limiting, and not eligible subject-matter.

14. **As to Claim 9**, the clause "**wherein** the act of developing a media plan for a plurality of advertisers in the specific industry further comprises an act of selecting credit unions as an industry segment within the financial services industry" is a "wherein" clause, calling into question the limiting effect of the language in Claim 9. Credit Unions

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as a segment within the financial services industry is simply a field of use and thus not limiting, and not eligible subject-matter.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. **Claims 1-8 and claim 49** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gemmy Allen, Marketing, Chapter 7, Place, 1999, See Hyperbook, <http://ollie.dcccd.edu/MRKT2370/book/mrktbook.htm> in view of Forsythe et al, WO 02/19058 A2.

18. **Claim 9** is rejected under 35 U.S.C. 103(a) as being unpatentable over Gemmy Allen, Marketing, Chapter 7, Place, 1999, See Hyperbook, <http://ollie.dcccd.edu/MRKT2370/book/mrktbook.htm> in view of Forsythe et al, WO 02/19058 A2, in further view of Wall, Kim T., "CUNA Marketing Council: how to work

with an ad agency" (advertising; Credit Union National Association) Credit Union Executive, July, 1994.

19. **CLAIM 1:** As per Claim 1, Allen teaches a method for providing discounted media placement to a plurality of advertisers, the method comprising acts of: acting as an intermediary between a media provider and the plurality of advertisers; "A producer (advertiser) will use an intermediary when it believes that the intermediary can perform the function(s) more economically and efficiently than it can." Allen, pg 1, par. 4, "Intermediaries are organizations operating in the middle or between the producer (advertiser) and the final buyer. They link producers to other intermediaries or to the ultimate users of the product. Traditionally, intermediaries have been referred to as middlemen." Allen, pg 1, par 2 receiving a large block of media (buy in large quantities) at a volume-discounted price from a media provider "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities (block of media) and sell in smaller quantities" Allen, pg 2, par 2 See also Allen pg 7, par 5 discount; dividing the large block of media into a plurality of smaller media blocks; "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell in smaller quantities (plurality of smaller media blocks)" Allen, pg 2, par 2. providing a first smaller media block to a first advertiser at a first volume-discounted price; "A drop-shipper or direct-mill shipper is a wholesaler who accumulates orders from retailers and purchases sizable quantities from the manufacturer at a discount." Allen, pg 7, par 5 "Through the elimination of the warehousing, inventory, and shipping functions, the firm provides merchandise to the

retailer at a reduced cost. It also permits the retailer (**advertiser**) to share in a **discount for quantity purchases**" Allen, pg 7, par 5. and providing a second smaller media block to a second advertiser at a second volume-discounted price, whereby through receiving and dividing the large block of media into a plurality of smaller media blocks, the plurality of advertisers receive media placement at a volume-discounted price. "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy (**large block of media**) in large quantities and sell (**smaller block of media**) in smaller quantities" Allen, pg 2, par 2. "A drop-shipper or direct-mill shipper is a wholesaler who accumulates orders from retailers (**advertisers**) and purchases sizable quantities from the manufacturer (**media provider**) at a discount." Allen, pg 7, par 5 "Through the elimination of the warehousing, inventory, and shipping functions, the firm provides merchandise to the retailer at a reduced cost. It also permits the retailer (**advertiser**) to share in a **discount for quantity purchases**" Allen, pg 7, par 5.

20. Allen does not teach the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots.

21. **However**, Forsythe et al, teaches the concept of an intermediary (advertising agency) between an advertiser or group of advertisers, making wholesale purchases of advertising spots. See Forsythe et al, page 2 par 1 "When an advertising agency is involved in the traditional media-buying process, the advertising agency (**intermediary**) contacts the media outlet to request rate(s) or rate(s) with schedule(s) for one or more particular media advertising choices (newspaper, outdoor, TV, cable, radio or any

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combination of these). The selected media outlet send the rate(s) or rate(s) with schedule(s) to the advertising agency which then **negotiates with the media outlet for better rate(s)**. The advertising agency sends a second request, based on the new negotiated rate(s), to the media outlet which then sends adjusted rate(s) and schedule(s), based on the new (second) request, back to the advertising agency. After the advertising agency receives the adjusted rate(s) and schedule(s) from the media outlet and gets its client's approval, the advertisement(s) is placed with the media outlet by the advertising agency.

22. The wholesale purchase of advertising spots is taught by Forsythe et al, page 3, paragraphs 1-3, specifically paragraph 3 "Another web-based company, BuyMedia.com, serves primarily as a **broker**/fax service between **agency buyers** and broadcast media outlets. This site provides open-ended transactions between buyers and sellers in which a broadcast media purchase is **negotiated** and finalized between buyers and the sellers. BroadcastSpots.com is an online media service that offers unsold broadcast inventory to media buyers at **discounted rates**."

23. **Therefore**, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots, **thereby** making individual advertisers, manufacturers, or retailers more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media

blocks, which would negotiate, plan and offer such advertisers, manufacturers or retailers such media blocks at a discount.

24. **CLAIM 2:** As per Claim 2, Allen teaches a method for providing discounted media placement to a plurality of advertisers as set forth in Claim 1 above, wherein the act of receiving a large block of media at a volume-discounted price from a media provider, the large block of media is received in a form selected from a group consisting of radio, television, a tradeshow, a billboard, Internet, a sponsorship advertisement, television placement, a print advertisement, and an Internet keyword. "Intermediaries are organizations operating in the middle or between the **producer (producer of radio, television, tradeshow, billboard, internet, sponsorship advertisement, television placement, a print advertisement or internet keyword media)** and the final buyer. They link producers to other intermediaries or to the ultimate users of the product **(block of media in the form of radio, television, a tradeshow, a billboard, Internet, a sponsorship advertisement, television placement, print advertisement, or Internet keyword)**. Traditionally, intermediaries have been referred to as middlemen." Allen, pg 1, par 2 "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell in smaller quantities. They help to smooth the distribution path for goods by creating utility, performing marketing functions and cutting costs. Producers do not have to deal directly with a large number of end-users. Instead, marketing intermediaries handle the tasks involved. They are often specialists in certain functions and can perform these activities then producers can. Consumers need an assortment of products and intermediaries resolve this assortment

discrepancy by gathering products from several manufacturers to offer a broad assortment to consumers. By representing numerous producers, marketing intermediaries cut the costs of buying and selling. Because they can consolidate orders, they may also be able to negotiate better prices than individual consumers could." Allen pg 2 par 2.

25. Allen does not explicitly teach purchasing of blocks of media including radio, television, a tradeshow, a billboard, Internet, a sponsorship advertisement, television placement, a print advertisement, or an internet keyword.

26. **However**, Forsythe et al teaches purchasing of blocks of media including radio, television, a tradeshow, a billboard, Internet, a sponsorship advertisement, television placement, a print advertisement, or an internet keyword. See Forsythe et al page 2, paragraph 1 (... "newspaper, outdoor, TV, cable, radio or any combination of these" ...).

27. **Therefore**, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots including radio, television, a tradeshow, a billboard, Internet, a sponsorship advertisement, television placement, a print advertisement or an internet keyword, **thereby** making individual advertisers, manufacturers, or retailers more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan and offer such advertisers, manufacturers or retailers such media blocks at a discount.

28. **CLAIM 3:** As per Claim 3, Allen teaches a method for providing discounted media placement to a plurality of advertisers as set forth above in Claim 2, wherein the act of acting as an intermediary between a media provider and the plurality of advertisers, further comprises an act of negotiating directly with the media provider for a discounted price based on volume. "Because they can consolidate orders, they may also be able to **negotiate** better prices than individual consumers could." Allen, pg 2, par 2

29. **CLAIM 4:** As per Claim 4, Allen teaches a method for providing discounted media placement to a plurality of advertisers as set forth above in Claim 3, wherein the act of dividing the large block of media into a plurality of smaller media blocks further comprises acts of: breaking up the large media block into the plurality of smaller media blocks, where each of the plurality of smaller media blocks is a participation opportunity; and offering the participation opportunity to an advertiser. Traditionally, intermediaries have been referred to as middlemen." Allen, pg 1, par 2 "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell in smaller quantities (**breaking up the large media block into smaller media blocks (participation opportunity)**). They help to smooth the distribution path for goods by creating utility, performing marketing functions and cutting costs. Producers do not have to deal directly with a large number of end-users. Instead, marketing intermediaries handle the tasks involved. They are often specialists in certain functions and can perform these activities then producers can. Consumers need an assortment of products and intermediaries resolve this assortment discrepancy

by gathering products from several manufacturers to offer a broad assortment to consumers (advertiser). By representing numerous producers, marketing intermediaries cut the costs of buying and selling. Because they can consolidate orders, they may also be able to negotiate better prices than individual consumers could." Allen pg 2 par 2.

30. **CLAIM 5:** As per Claim 5, Allen teaches a method for providing discounted media placement to a plurality of advertisers as set forth above in Claim 1, wherein the act of acting as an intermediary between a media provider and the plurality of advertisers, further comprises an act of negotiating directly with the media provider for a discounted price based on volume. "Because they can consolidate orders, they may also be able to negotiate better prices than individual consumers could." Allen, pg 2, par 2

31. **CLAIM 6:** As per Claim 6, Allen teaches a method for providing discounted media placement to a plurality of advertisers as set forth above in Claim 1, wherein the act of dividing the large block of media into a plurality of smaller media blocks further comprises acts of: breaking up the large media block into the plurality of smaller media blocks, where each of the plurality of smaller media blocks is a participation opportunity; and offering the participation opportunity to an advertiser. Traditionally, intermediaries have been referred to as middlemen." Allen, pg 1, par 2. "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell in smaller quantities (breaking up the large media block into smaller media blocks (participation opportunity)). They help to smooth the

distribution path for goods by creating utility, performing marketing functions and cutting costs. Producers do not have to deal directly with a large number of end-users. Instead, marketing intermediaries handle the tasks involved. They are often specialists in certain functions and can perform these activities then producers can. Consumers need an assortment of products and intermediaries resolve this assortment discrepancy by gathering products from several manufacturers to offer a broad assortment to consumers (advertiser). By representing numerous producers, marketing intermediaries cut the costs of buying and selling. Because they can consolidate orders, they may also be able to negotiate better prices than individual consumers could." Allen pg 2 par 2.

32. **CLAIM 7:** As per Claim 7, Allen teaches a method for providing discounted marketing services to an advertiser in a specific industry, the method comprising acts of researching a market in a specific industry; developing a media plan for a plurality of advertisers in the specific industry; negotiating directly with a media provider for a discounted price on a large block of media based on volume; dividing the large block of media into a plurality of smaller blocks, where each smaller block of media is a participation opportunity; and selling the participation opportunity to an advertiser, whereby through negotiating for and dividing the large block of media into a plurality of smaller blocks, an advertiser purchasing a participation opportunity receives media placement at a volume-discounted price. "Intermediaries smooth the flows of products to buyers by performing the key functions of informing, promoting, and physical possession (including negotiation, title, payment, risk taking and financing). A

producer will use an intermediary when it believes that the intermediary can perform the function(s) more economically and efficiently than it can. **The information function involves gathering and distributing marketing research (researching a market in a specific industry) and intelligence about the environment for planning purposes (developing a media plan for a plurality of advertisers in the specific industry).**

Scanner technology provides a great amount of information. The promotion function involves developing and spreading persuasive communications about an offer. The physical possession function consists of the transporting and storing of products. This activity involves **the negotiations** for reaching an agreement on price and other terms. The title is the actual transfer of ownership from one organization or person to another. The payment involves buyers paying their bills. The risk taking function assumes the risk of carrying the product and receiving payment. The financing function involves acquiring and using funds to cover costs." Allen pg 1 par 4. "Traditionally, intermediaries have been referred to as middlemen." Allen, pg 1, par 2. "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell in smaller quantities **(breaking up the large media block into smaller media blocks (participation opportunity))**. They help to smooth the distribution path for goods by creating utility, performing marketing functions and cutting costs. Producers do not have to deal directly with a large number of end-users. Instead, marketing intermediaries handle the tasks involved. They are often specialists in certain functions and can perform these activities then producers can. Consumers need an assortment of products and intermediaries resolve this assortment discrepancy

by gathering products from several manufacturers (**media provider**) to offer a broad assortment to consumers (**advertiser**). By representing numerous producers, marketing intermediaries cut the costs of buying and selling. Because they can consolidate orders, they may also be able to **negotiate better prices** than individual consumers (**advertiser**) could." Allen pg 2 par 2.

33. Allen does not teach the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots.

34. **However**, Forsythe et al, teaches the concept of an intermediary (advertising agency) between an advertiser or group of advertisers, making wholesale purchases of advertising spots. See Forsythe et al, page 2 "When an advertising agency is involved in the traditional media-buying process, the advertising agency (**intermediary**) contacts the media outlet to request rate(s) or rate(s) with schedule(s) for one or more particular media advertising choices (newspaper, outdoor, TV, cable, radio or any combination of these). The selected media outlet send the rate(s) or rate(s) with schedule(s) to the advertising agency which then **negotiates with the media outlet for better rate(s)**. The advertising agency sends a second request, based on the new negotiated rate(s), to the media outlet which then sends adjusted rate(s) and schedule(s), based on the new (second) request, back to the advertising agency. After the advertising agency receives the adjusted rate(s) and schedule(s) from the media outlet and gets its client's approval, the advertisement(s) is placed with the media outlet by the advertising agency.

35. The wholesale purchase of advertising spots is taught by Forsythe et al, page 3, paragraphs 1-3, specifically paragraph 3 "Another web-based company, BuyMedia.com, serves primarily as a broker/fax service between agency buyers and broadcast media outlets. This site provides open-ended transactions between buyers and sellers in which a broadcast media purchase is negotiated and finalized between buyers and the sellers. BroadcastSpots.com is an online media service that offers unsold broadcast inventory to media buyers at discounted rates."

36. **Therefore**, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots, **thereby** making individual advertisers, manufacturers, or retailers more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan, and offer such advertisers, manufacturers or retailers such media blocks at a discount.

37. **CLAIM 8:** As per Claim 8, Allen teaches a method for providing discounted marketing services to an advertiser in a specific industry as set forth above in Claim 7, wherein the act of researching a market in specific industry further Comprises an act of selecting an industry from a group consisting of a financial services industry, automotive industry, computer industry, real estate industry, and transportation industry.
"Intermediaries smooth the flows of products to buyers by performing the key functions of informing, promoting, and physical possession (including negotiation, title, payment,

risk taking and financing). A producer will use an intermediary when it believes that the intermediary can perform the function(s) more economically and efficiently than it can.

The information function involves gathering and distributing marketing research (researching a market in a specific industry including financial services industry, automotive industry, computer industry, real estate industry, and transportation industry) and intelligence about the environment for planning purposes (developing a media plan for a plurality of advertisers in the specific industry).

Scanner technology provides a great amount of information. The promotion function involves developing and spreading persuasive communications about an offer. The physical possession function consists of the transporting and storing of products. This activity involves the negotiations for reaching an agreement on price and other terms. The title is the actual transfer of ownership from one organization or person to another. The payment involves buyers paying their bills. The risk taking function assumes the risk of carrying the product and receiving payment. The financing function involves acquiring and using funds to cover costs.” Allen pg 1 par 4

38. Allen does not explicitly teach the act of researching a market in a specific market including financial services industry, automotive industry, computer industry, real estate industry or transportation industry.

39. However Forsythe et al teaches the act of researching a market in a specific market including financial services industry, automotive industry, computer industry, real estate industry or transportation industry. See Forsythe et al, Page 7, par 3, Page 6 par

5, and Figs 1 and 8A-D, particularly Fig 8A Automotive, Banking/Financial, ECommerce, Home Improvement, Other.

40. **Therefore**, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding an intermediary (advertising agency) researching a market in a specific market including financial services industry, automotive industry, computer industry, real estate industry or transportation industry, **thereby** making advertisers, manufacturers, or retailers, in specific markets, more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan, and offer such advertisers, manufacturers or retailers such media blocks at a discount in these specific industries .

41. **CLAIM 9:** As per Claim 9, Allen teaches a method for providing discounted marketing services to an advertiser in a specific industry as set forth above in Claim 8, wherein the act of developing a media plan for a plurality of advertisers in the specific industry further comprises an act of selecting credit unions as an industry segment within the financial services industry. "Intermediaries smooth the flows of products to buyers by performing the key functions of informing, promoting, and physical possession (including negotiation, title, payment, risk taking and financing). A producer will use an intermediary when it believes that the intermediary can perform the function(s) more economically and efficiently than it can. The information function involves gathering and distributing marketing research (researching a market in a specific industry including financial services industry, of which credit unions is

an industry segment) and intelligence about the environment for planning purposes (developing a media plan for a plurality of advertisers in the specific industry including financial services industry, of which credit unions is an industry segment). Scanner technology provides a great amount of information. The promotion function involves developing and spreading persuasive communications about an offer. The physical possession function consists of the transporting and storing of products. This activity involves **the negotiations** for reaching an agreement on price and other terms. The title is the actual transfer of ownership from one organization or person to another. The payment involves buyers paying their bills. The risk taking function assumes the risk of carrying the product and receiving payment. The financing function involves acquiring and using funds to cover costs." Allen pg 1 par 4.

42. Allen does not explicitly teach developing a media plan for credit unions as an industry segment within the financial services industry.

43. Forsythe et al teaches the act of researching a market in a specific market including financial services industry.

44. Forsythe et al does not teach developing a media plan for credit unions as an industry segment within the financial services industry.

45. **However,** Wall, Kim T., "CUNA Marketing Council: how to work with an ad agency" (advertising; Credit Union National Association) Credit Union Executive, July, 1994 does teach developing a media plan for credit unions as an industry segment within the financial services industry. "In the past five years, Georgia Federal Credit

Union, Clarkston, GA., has grown significantly in assets-- from \$60million to \$130million-- and in marketing staff--from one person to three. Five years ago, because one person couldn't do it all (negotiate, research, **develop media plan**) Georgia Federal (a credit union) hired an advertising agency (intermediary) to assist it." Wall, Kim T., "CUNA Marketing Council: how to work with an ad agency" (advertising; Credit Union National Association) Credit Union Executive, July, 1994, Paragraph 2 of Text: Section (best available copy provided) "Many credit union executives don't realize that ad agencies do much more than create ads. They offer expertise in several areas: copywriting, organizing promotional campaigns (develop media plan), graphic design, and research (develop media plan). Wall, Kim T., "CUNA Marketing Council: how to work with an ad agency" (advertising; Credit Union National Association) Credit Union Executive, July, 1994, Paragraph 4 of Text: Section (best available copy provided).

46. **Therefore**, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding an intermediary (advertising agency) researching a market in a specific market including financial services industry, automotive industry, computer industry, real estate industry or transportation industry, and to further incorporate the teachings of Wall, Kim T., "CUNA Marketing Council: how to work with an ad agency" (advertising; Credit Union National Association) Credit Union Executive, July, 1994 regarding developing a media plan for credit unions as a segment within the financial services industry **thereby** making advertisers, manufacturers, or retailers, in specific markets, and in segments of the financial industry such as credit unions, more efficient and more cost-effective by

using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan, and offer such advertisers, manufacturers or retailers such media blocks at a discount in these specific industries .

47. **CLAIM 49:** As per Claim 49, Allen teaches A method for providing discounted media placement to a plurality of advertisers, the method comprising acts of: acting as an intermediary between a media provider and the plurality of advertisers; receiving a large block of media at a volume-discounted price from a media provider; dividing the large block of media into a plurality of smaller media blocks; providing the plurality of smaller media blocks to a plurality of advertisers at volume-discounted prices, whereby through receiving and dividing the large block of media into a plurality of smaller media blocks, the plurality of advertisers are able to receive media placement at a volume-discounted price. "A producer (media provider) will use an intermediary when it believes that the intermediary can perform the function(s) more economically and efficiently than it can. Allen, pg 1, par. 4, "Intermediaries are organizations operating in the middle or between the producer (media provider) and the final buyer (advertiser). They link producers to other intermediaries or to the ultimate users of the product. Traditionally, intermediaries have been referred to as middlemen." Allen, pg 1, par 2 receiving a large block of media at a volume-discounted price from a media provider "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities (block of media) and sell in smaller quantities" Allen, pg 2, par 2; dividing the large block of media into a plurality of smaller media blocks; "Intermediaries reduce this quantity discrepancy by matching supply and demand. They

buy in large quantities and sell in smaller quantities (**plurality of smaller media blocks**)” Allen, pg 2, par 2. providing a first smaller media block to a first advertiser at a first volume-discounted price; “A drop-shipper or direct-mill shipper is a wholesaler who accumulates orders from retailers and purchases **sizable** quantities from the manufacturer at a discount.” Allen, pg 7, par 5 “Through the elimination of the warehousing, inventory, and shipping functions, the firm provides merchandise to the retailer at a reduced cost. It also permits the retailer (**advertiser**) to share in a discount for quantity purchases” Allen, pg 7, par 5. and providing a second smaller media block to a second advertiser at a second volume-discounted price, whereby through receiving and dividing the large block of media into a plurality of smaller media blocks, the plurality of advertisers receive media placement at a volume-discounted price.

“Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy (**large block of media**) in large quantities and sell (**smaller block of media**) in smaller quantities” Allen, pg 2, par 2. “A drop-shipper or direct-mill shipper is a wholesaler who accumulates orders from retailers (**advertisers**) and purchases sizable quantities from the manufacturer at a **discount**.” Allen, pg 7, par 5 “Through the elimination of the warehousing, inventory, and shipping functions, the firm provides merchandise to the retailer at a reduced cost. It also permits the retailer (**advertiser**) to share in a **discount** for quantity purchases” Allen, pg 7, par 5.

48. Allen does not teach the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots.

49. **However**, Forsythe et al, teaches the concept of an intermediary (advertising agency) between an advertiser or group of advertisers, making wholesale purchases of advertising spots. See Forsythe et al, page 2 par 1 "When an advertising agency is involved in the traditional media-buying process, the advertising agency (**intermediary**) contacts the media outlet to request rate(s) or rate(s) with schedule(s) for one or more particular media advertising choices (newspaper, outdoor, TV, cable, radio or any combination of these). The selected media outlet send the rate(s) or rate(s) with schedule(s) to the advertising agency which then **negotiates with the media outlet for better rate(s)**. The advertising agency sends a second request, based on the new negotiated rate(s), to the media outlet which then sends adjusted rate(s) and schedule(s), based on the new (second) request, back to the advertising agency. After the advertising agency receives the adjusted rate(s) and schedule(s) from the media outlet and gets its client's approval, the advertisement(s) is placed with the media outlet by the advertising agency.
50. The wholesale purchase of advertising spots is taught by Forsythe et al, page 3, paragraphs 1-3, specifically paragraph 3 "Another web-based company, BuyMedia.com, serves primarily as a **broker/fax** service between **agency buyers** and broadcast media outlets. This site provides open-ended transactions between buyers and sellers in which a broadcast media purchase is **negotiated** and finalized between buyers and the sellers. BroadcastSpots.com is an online media service that offers unsold broadcast inventory to media buyers at **discounted rates**."

51. **Therefore**, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots, **thereby** making individual advertisers, manufacturers, or retailers more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan and offer such advertisers, manufacturers or retailers such media blocks at a discount.

Conclusion

52. ***Duplicate Claims Warning:***

53. Applicant is advised that should claim 1 be found allowable, claim 49 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

54. Applicant is advised that should claim 49 be found allowable, claim 1 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

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55. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

56. Fenti et al, US 20070083434 A1 discloses a "System and Method for Brokering the sale of Advertising."

57. Sugiyai, US 20020095349 A1 discloses a "Net market system"
58. Adacjo, US 20010027432 A1 discloses a "Method of establishing a system of a secondary market for disbursement information."
59. Son, US 20010027412 A1 discloses a "Method and apparatus for providing advertisements."
60. Mikurak, US 20060178918 A1, discloses a "Technology Sharing during demand and supply planning in a network-based supply chain environment."
61. Kar, US 20030083949 A1, discloses a "System and Method for facilitating consignment and sales of inventory or services."
62. Kar, US 7269571 B2, discloses a "System and Method for Facilitating Consignment and sales of inventory or services."
63. Khoo et al, US 7124091 B1, discloses a "Method and System for Ordering an Advertising Spot over a Data Network."
64. Altberg et al., US 20070162296 A1, discloses "Methods and apparatuses for Audio advertisements."
65. Nestel, US 20030046162 A1, discloses "Private Advertising, Entertainment and Informational Digital Networks for Out of Home and Outdoor Venues."
66. Forsythe et al, US 20050171897 A1, discloses "Method and System for Selecting and Purchasing Media Advertising."
67. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL STIBLEY whose telephone number is

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(571)270-3612. The examiner can normally be reached on Monday through Friday 7:30am to 5:00pm EST.

68. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Kyle can be reached on (571) 272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

69. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Stibley/
Examiner, Art Unit 4194
January 2, 2008

/Charles R. Kyle/

Supervisory Patent Examiner, Art Unit 4194